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**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1944**

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**No. 965**

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**H. L. MOSHIER,**

*Petitioner,*

*vs.*

**W. R. WAYLAND, FRED G. HOLMES, and DEL  
E. WEBB,**

*Respondents.*

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**BRIEF OF RESPONDENTS IN OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI**

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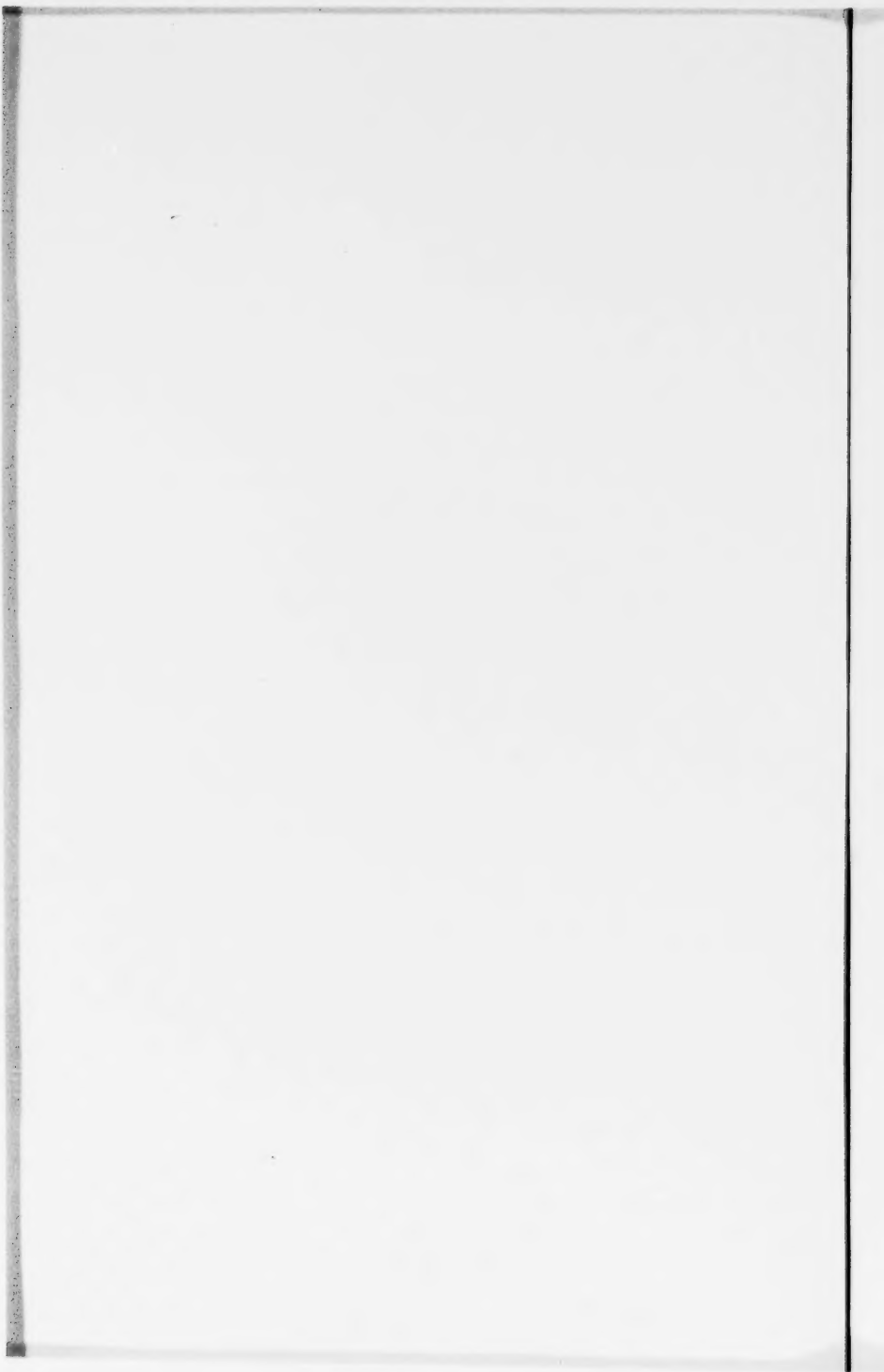


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### Opinions Below

No opinion was filed in either the Superior Court in and for the County of Maricopa, Arizona, nor in the Supreme Court of Arizona.

### Statement of the Case

On May 19, 1943, respondents caused a Writ of Execution to be issued upon a judgment in their favor in the amount of \$126.65 against H. L. Moshier (the petitioner herein), James Dean Collins and Julia C. Collins. (Fol. 1 p 1) The Writ of Execution was duly and regularly levied on what is commonly referred to as the South one-half of Lot 8, Block 1,

Churchill Addition to the City of Phoenix, Maricopa County, Arizona. On June 22, 1943, after due and proper proceedings, the property was sold on execution sale to the respondents for the sum of \$148.45. The sheriff's return of sale on execution was filed July 25, 1943. (Fol. 11-12, p 4).

On July 26, 1943, the respondents filed a motion for confirmation of the sale, and on the 2nd day of August, 1943, the court entered its order confirming and approving the sale. (Fol. 71, p 26).

On September 2, 1943, respondents paid city, county and state taxes against the property totalling \$1045.52. (Fol. 43, p 16).

On November 22, 1943, petitioner filed her motion to set aside the sale and execution. (Fol. 24, p 8).

In response to the motion respondents offered to permit petitioner to redeem the property if she would refund to respondents the money respondents had paid out. (Purchase price \$148.45; taxes \$1045.52; total \$1193.97). (Fol. 43, p 16). This petitioner refused to do. The motion to vacate the sale was denied. (Fol. 72, p 26). On December 18, 1943, petitioner filed a motion for rehearing of the motion to vacate the execution sale. (Fol. 38, p 14). This motion was denied December 21, 1943. (Fol. 73, p 16).

On February 25, 1944, petitioner filed notice of appeal to the Supreme Court of Arizona. (Fol. 60, p 22).

September 19, 1944, respondents filed in the Supreme Court of Arizona their motion to dismiss the appeal on the ground that if the appeal was from the order of the trial court dated December 8, 1943, it was not taken within the 60 days from the date of the order as required by Section 21-1801 Arizona Code, 1939, and if from the order of December 27, 1943, the appeal was not from an appealable order. (Fol. 78, p 29).

The motion to dismiss was granted by the Supreme Court of Arizona September 25, 1944. (Fol. 82a, p 31). Petitioner's petition for rehearing was denied October 23, 1944. (Fol. 85, p 33).

#### **Summary of Argument**

The Petition should be denied because:

1. The order of the State Supreme Court dismissing the appeal to that court determined a matter of purely local law and is conclusive; no federal question is presented by the petition.

#### **Argument**

The Petition should be denied because:

The order of dismissal by the State Supreme Court determined a matter of purely local law and is conclusive; no federal question is presented by the petition.

The Petition herein seeks a review by this Court of an order of the Supreme Court of Arizona dismissing petitioner's appeal to that court because not within the statutes of Arizona providing for appeals.



The mode of appealing from judgments of a state subordinate court to the State Supreme Court is a matter of local concern only.

*Coyle v. Smith*, 221 U. S. 559;  
55 L.Ed. 853; 31 S.Ct. 688.

*John v. Paullin*, 231 U. S. 583;  
58 L.Ed. 381; 34 S.Ct. 178.

An order of a State Supreme Court dismissing an appeal from a subordinate court because not in conformity with the state statutes governing appeals determines a matter of local concern only, presents no federal question, and is not reviewable by this Court.

*Coyle v. Smith*, supra.

*John v. Paullin*, supra.

*Newman v. Gates*, 204 U. S. 89;  
51 L.Ed. 385; 27 S.Ct. 220;

*Chapell Chem. etc. Co. v.*

*Virginia etc. Mines Co.*,

172 U. S. 472;

43 L.Ed. 520; 19 S.Ct. 268.

### Conclusion

It is respectfully submitted that the Petition should be denied.

Respectfully submitted,  
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*End*

